

AMENDED IN SENATE SEPTEMBER 2, 2003

AMENDED IN SENATE JULY 15, 2003

AMENDED IN SENATE JULY 3, 2003

AMENDED IN SENATE JUNE 19, 2003

AMENDED IN ASSEMBLY APRIL 30, 2003

AMENDED IN ASSEMBLY APRIL 21, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 1688**

---

---

**Introduced by Assembly Member Goldberg**  
**(Coauthors: Assembly Members Koretz and Montanez)**

February 21, 2003

---

---

An act to add and repeal Part 8.5 (commencing with Section 2050) ~~to~~ of Division 2 of the Labor Code, relating to car washes.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1688, as amended, Goldberg. Car washes.

Existing law regulates various aspects of workplace and employee safety and health.

This bill would, until January 1, 2007, regulate the industry of car washing and polishing by providing specific recordkeeping requirements that employers of car washers must implement with regard to car washer wages, hours, and working conditions. The bill would require employers of car washers to register with the Labor Commissioner; *and* pay a specified registration fee, ~~and obtain a specified surety bond~~. Failure to register pursuant to these provisions

would be a misdemeanor punishable by specified penalties, thereby imposing a state-mandated local program subject to a civil fine of \$100 for each calendar day of violation not to exceed \$10,000. These penalties, fines and registration fees would be deposited in the Car Wash Worker Restitution Fund and the Car Wash Worker Fund, which this bill would create, for disbursement by the commissioner, upon appropriation by the Legislature.

The bill would state the intent of the Legislature to require the Labor Commissioner to report on labor law violations and enforcement in the car washing and polishing industry.

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~yes~~ no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) California is home to hundreds of full-time car washes that
- 4 employ tens of thousands of car wash workers.
- 5 (b) The work performed by car wash employees is laborious,
- 6 fast paced, and potentially hazardous.
- 7 (c) Car wash employees work long hours and may service
- 8 hundreds of vehicles on any given workday.
- 9 (d) According to various legal advocates, the car wash industry
- 10 is plagued with labor law violations, including minimum wage,
- 11 overtime, and rest and meal period violations.
- 12 (e) Some car wash employees, commonly known as
- 13 “propineros,” are not paid a wage by their employers and receive
- 14 only the tips given by customers.
- 15 (f) Some other car wash employees are paid below the
- 16 minimum wage and not paid at an overtime rate for overtime hours
- 17 worked.



(g) A number of car wash employees have been harassed, intimidated, and mistreated by their employers because of their immigration status.

(h) As a result of low wages and widespread labor law violations, some car wash employees are forced to work in substandard working conditions.

(i) Existing labor laws and enforcement efforts have failed to remedy these problems.

(j) Therefore, it is the intent of the Legislature, in enacting this act, to establish a system of registration, bonding requirements, and enforcement to impose prompt and effective ~~criminal and~~ civil sanctions for the violation of the provisions set forth in this act or any provision of law applicable to the employment of workers in the car washing and polishing industry.

SEC. 2. Part 8.5 (commencing with Section 2050) is added to Division 2 of the Labor Code, to read:

## PART 8.5. CAR WASHES

### CHAPTER 1. GENERAL PROVISIONS

2050. The enactment of this part is an exercise of the police power of the State of California for the protection for the public welfare, prosperity, health, safety, and peace of its people. The civil penalties provided by this chapter are in addition to any other penalty provided by law.

2051. As used in this part:

(a) “Car washing and polishing” means washing, cleaning, drying, polishing, detailing, servicing, or otherwise providing cosmetic care to vehicles. “Car washing and polishing” does not include motor vehicle repair, as defined in Section 9880.1 of the Business and Professions Code.

(b) (1) “Employer” means any individual, partnership, corporation, limited liability company, joint venture, or association engaged in the business of car washing and polishing that engages any other individual in providing those services.

(2) “Employer” does not include any charitable, youth, service, veteran, or sports group, club, or association that conducts car washing and polishing on an intermittent basis to raise funds for charitable, education, or religious purposes. “Employer” does

1 not include any licensed vehicle dealer, car rental agency, or  
2 automotive repair business that conducts car washing and  
3 polishing ancillary to its primary business of selling, leasing, or  
4 servicing vehicles. “Employer” does not include any self-service  
5 car wash or automated car wash that has ~~no more than the~~  
6 ~~equivalent of two full-time~~ employees for cashiering or  
7 maintenance purposes only.

8 (c) “Employee” means any person, including an alien or  
9 minor, who renders actual car washing and polishing services in  
10 any business for an employer, whether for tips or for wages, and  
11 whether wages are calculated by time, piece, task, commission, or  
12 other method of calculation, and whether the services are rendered  
13 on a commission, concessionaire, or other basis.

14 (d) “Commissioner” means the Labor Commissioner.

15 2052. Every employer shall keep accurate records for three  
16 years, showing all of the following:

17 (a) The names and addresses of all employees engaged in  
18 rendering actual services for any business of the employer.

19 (b) The hours worked daily by each employee, including the  
20 times the employee begins and ends each work period.

21 (c) All gratuities received daily by the employer, whether  
22 received directly from the employee or indirectly by deduction  
23 from the wages of the employee or otherwise.

24 (d) The wage and wage rate paid each payroll period.

25 (e) The age of all minor employees.

26 (f) Any other conditions of employment.

27 2053. The Division of Labor Standards and Enforcement  
28 shall enforce this chapter. The commissioner ~~shall adopt all~~ *may*  
29 *adopt any regulations and rules* necessary to carry out the  
30 provisions of this chapter.

## 31 CHAPTER 2. REGISTRATION

32  
33  
34 2054. Every employer shall register with the commissioner  
35 annually.

36 2055. The commissioner may not permit any employer to  
37 register, nor may the commissioner permit any employer to renew  
38 registration until all of the following conditions are satisfied:

39 (a) The employer has applied for registration to the  
40 commissioner by presenting proof of compliance with the local

1 government's business licensing or regional regulatory  
2 requirements.

3 (b) The employer has obtained a surety bond issued by a surety  
4 company admitted to do business in this state. The principal sum  
5 of the bond shall be not less than ~~ten thousand dollars (\$10,000)~~  
6 *fifteen thousand dollars (\$15,000)*. The employer shall file a copy  
7 of the bond with the commissioner.

8 (1) The bond required by this section shall be in favor of, and  
9 payable to the people of the State of California and shall be for the  
10 benefit of any employee damaged by his or her employer's failure  
11 to pay wages, interest on wages, or fringe benefits, or damaged by  
12 violation of Section 351 or 353.

13 (2) Thirty days prior to the cancellation or termination of any  
14 surety bond required by this section, the surety shall send written  
15 notice to both the employer and the commissioner, identifying the  
16 bond and the date of the cancellation or termination.

17 (3) An employer may not conduct any business until the  
18 employer obtains a new surety bond and files a copy of it with the  
19 commissioner.

20 (c) The employer has documented that a current workers'  
21 compensation insurance policy is in effect for the employees.

22 (d) The employer has paid ~~a registration fee to the~~  
23 ~~commissioner in the amount of one hundred fifty dollars (\$150)~~  
24 ~~plus an additional seventy-five dollars (\$75) for each branch~~  
25 ~~location maintained in this state by the employer. the fees~~  
26 ~~established pursuant to Section 2059.~~

27 2056. When a certificate of registration is originally issued or  
28 renewed under this chapter, the commissioner shall provide  
29 related and supplemental information to the registrant regarding  
30 business administration and applicable labor laws.

31 2057. Proof of registration shall be by an official Division of  
32 Labor Standards Enforcement registration form. Each employer  
33 shall post the registration form where it may be read by the  
34 employees during the workday.

35 2058. At least 30 days prior to the expiration of each  
36 registrant's registration, the commissioner shall mail a renewal  
37 notice to the last known address of the registrant. However,  
38 omission of the commissioner to provide the renewal notice in  
39 accordance with this subdivision may not excuse a registrant from  
40 making timely application for renewal of registration, may not be

1 a defense in any action or proceeding involving failure to renew  
2 registration, and may not subject the commissioner to any legal  
3 liability.

4 ~~2059. The commissioner shall require that, as a condition of~~  
5 ~~continued registration, the following employers shall maintain a~~  
6 ~~bond issued by a surety company admitted to business in this state:~~

7 ~~(a) A twenty thousand dollar (\$20,000) wage bond is required~~  
8 ~~if an employer has violated any federal or state labor law~~  
9 ~~governing the minimum wage and overtime, child labor,~~  
10 ~~occupational safety and health, or worker's compensation or has~~  
11 ~~been subject to a final judgment for failure to pay wages due his~~  
12 ~~or her car wash employees.~~

13 ~~(b) A twenty-five thousand dollar (\$25,000) wage bond is~~  
14 ~~required if an employer has failed to register with the~~  
15 ~~commissioner pursuant to Section 2055 committed multiple~~  
16 ~~violations of federal or state labor laws governing the minimum~~  
17 ~~wage and overtime, child labor, occupational safety and health, or~~  
18 ~~worker's compensation or has been subject to more than one final~~  
19 ~~judgment for unpaid wages in a three-year period. "Multiple~~  
20 ~~violations" as used in this subdivision, means one or more~~  
21 ~~violations occurring during three consecutive years or three or~~  
22 ~~more violations in a three-year period.~~

23 ~~(c) The bond required by this section shall be in favor of, and~~  
24 ~~payable to the people of the State of California, and shall be for the~~  
25 ~~benefit of any employee damaged by his or her employer's failure~~  
26 ~~to pay wages, interest on wages, or fringe benefits, or damaged by~~  
27 ~~violation of Section 351 or 353.~~

28 *2059. (a) The Department of Industrial Relations shall*  
29 *establish by regulation an annual registration fee for car wash*  
30 *employers sufficient to fund all costs to administer and enforce the*  
31 *provisions of this part.*

32 *(b) In addition to the fee established pursuant to subdivision*  
33 *(a), each employer shall be assessed an annual fee of seventy-five*  
34 *dollars (\$75) which shall be deposited in the Car Wash Worker*  
35 *Restitution Fund.*

36 *2060. No employer may conduct any business without*  
37 *complying with the registration and bond requirements of this*  
38 *chapter.*

2061. The commissioner may not ~~renew~~ *approve* the registration of any employer until all of the following conditions are satisfied:

(a) The employer has executed a written application, in a form prescribed by the commissioner, subscribed, and sworn by the employer containing the following:

~~(1) A statement by the employer of all facts concerning the form of ownership.~~

~~(2) If the applicant is a corporation, the corporate name, the names, residential addresses, and telephone numbers of all the officers of the corporation, the names of all persons exercising management responsibility in the applicant's office, and the names and addresses of all persons having a financial interest of 10 percent or more in the business, and the percentage of financial interest owned by each of those persons.~~

~~(3) If the applicant employer is other than a corporation, the names and addresses of all persons except bona fide employees on regular salaries, who are financially interested, either as partners, associates, or profit sharers, in the employer's car wash business together with the amount of their respective interests.~~

*(1) The name of the business entity and, if applicable, its fictitious or "doing business as" name.*

*(2) The form of the business entity and, if a corporation, all of the following:*

*(A) The date of incorporation.*

*(B) The state in which incorporated.*

*(C) If a foreign corporation, the date the articles of incorporation were filed with the California Secretary of State.*

*(D) Whether the corporation is in good standing with the Secretary of State.*

*(3) The federal employer identification number (FEIN) and the state employer identification number (SEIN) of the business.*

*(4) The business' address and telephone number and, if applicable, the addresses and telephone numbers of any branch locations.*

*(5) Whether the application is for a new or renewal registration and, if the application is for a renewal, the prior registration number.*

*(6) The names, residential addresses, telephone numbers, and Social Security numbers of the following persons:*



1 (A) All corporate officers, if the business entity is a  
2 corporation.

3 (B) All persons exercising management responsibility in the  
4 applicant's office, regardless of form of business entity.

5 (C) All persons, except bona fide employees on regular  
6 salaries, who have a financial interest of 10 percent or more in the  
7 business, regardless of the form of business entity, and the actual  
8 percent owned by each of those persons.

9 (7) The policy number, effective date, expiration date, and  
10 name and address of the carrier of the applicant business' current  
11 workers' compensation coverage.

12 (8) Whether any persons named in response to subparagraphs  
13 (A), (B), or (C) of subparagraph (6) of this section presently:

14 (A) Owe any unpaid wages.

15 (B) Have unpaid judgments outstanding.

16 (C) Have any liens or suits pending in court against himself or  
17 herself.

18 (D) Owe payroll taxes, or personal, partnership, or corporate  
19 income taxes, Social Security taxes, or disability insurance.

20 An applicant who answers affirmatively to any item described  
21 in paragraph (8) shall provide, as part of the application,  
22 additional information on the unpaid amounts, including the name  
23 and address of the party owed, the amount owed, and any existing  
24 payment arrangements.

25 (9) Whether any persons named in response to subparagraphs  
26 (A), (B), or (C) of paragraph (6) of this section have ever been cited  
27 or assessed any penalty for violating any provision of the Labor  
28 Code.

29 An applicant who answers affirmatively to any item described  
30 in paragraph (9) shall provide additional information, as part of  
31 the application, on the date, nature of citation, amount of penalties  
32 assessed for each citation, and the disposition of the citation, if  
33 any. The application shall describe any appeal filed. If the citation  
34 was not appealed, or if it was upheld on appeal, the applicant shall  
35 state whether the penalty assessment was paid.

36 (b) The employer has paid a registration fee to the  
37 commissioner pursuant to subdivision (d) of Section 2055.

38 2062. The commissioner may not register or renew the  
39 registration of an employer in any of the following circumstances:



(a) The employer has not fully satisfied any final judgment for unpaid wages due to an employee or former employee of a business for which the employer is required to register under this chapter.

(b) The employer has failed to remit the proper amount of contributions required by the Unemployment Insurance Code or the Employment Development Department had made an assessment for those unpaid contributions against the employer that has become final and the employer has not fully paid the amount of delinquency for those unpaid contributions.

(c) The employer has failed to remit the amount of Social Security and Medicare tax contributions required by the Federal Insurance Contributions Act (FICA) to the Internal Revenue Service and the employer has not fully paid the amount or delinquency for those unpaid contributions.

2063. *On the Web site of the Department of Industrial Relations the Labor Commissioner shall post a list of registered car washing and polishing businesses, including the name, address, registration number, and effective dates of registration.*

2064. An employer who fails to register pursuant to Section 2054 is guilty of a misdemeanor punishable by a fine of not more than one hundred dollars (\$100) for each calendar day the 2054 is subject to a civil fine of one hundred dollars (\$100) for each calendar day, not to exceed ten thousand dollars (\$10,000), the employer conducts car washing and polishing while unregistered.

~~2064.~~—

2065. (a) The Car Wash Worker Restitution Fund is established in the State Treasury. Seventy-five dollars (\$75) of each registrant's annual registration fee, required pursuant to subdivision (d) of Section 2055, shall be deposited in this fund. In addition, fines collected pursuant to Section ~~2063~~ 2064 shall be deposited into the fund. Moneys from the fund shall be disbursed, upon appropriation by the Legislature, by the commissioner only to persons determined by the commissioner to have been damaged by the failure to pay wages and penalties and other related damages by any car wash or polishing employer, to ensure the payment of wages and penalties and other related damages. Any disbursed funds subsequently recovered by the commissioner shall be returned to the fund.

(b) *The Car Wash Worker Fund is established in the State Treasury.* Upon appropriation by the Legislature, fifty percent of the remainder of the registrant's annual registration fee not deposited into the fund pursuant to subdivision (d) of Section 2055 shall be applied to costs incurred by the commissioner in administering the provisions of this section and enforcement and investigation of the car washing and polishing industry. ~~Any funds not used for administrative purposes shall be used for enforcement purposes. Upon appropriation by the Legislature, the other 50 percent of those funds shall be dedicated to create one or more positions to enforce labor law violations exclusively in the car wash industry. Any registration funds not used to fund enforcement positions shall be refunded to registered car washes in pro rata share.~~

### CHAPTER 3. SUCCESSORSHIP

~~2065.—~~

2066. A successor to any employer that is engaged in car washing and polishing that owed wages and penalties to the predecessor's former employee or employees is liable for those wages and penalties if the successor meets any of the following criteria:

(a) Uses substantially the same facilities or workforce to offer substantially the same services as the predecessor employer.

(b) Shares in the ownership, management, control of the labor relations, or interrelations of business operations with the predecessor employer.

(c) Employs in a managerial capacity any person who directly or indirectly controlled the wages, hours, or working conditions of the affected employees of the predecessor employer.

(d) Is an immediate family member of any owner, partner, officer, or director of the predecessor employer of any person who had a financial interest in the predecessor employer.

### CHAPTER 4. OPERATION

~~2066.—~~

1 2067. This part shall remain in effect only until January 1,  
2 2007, and as of that date is repealed, unless a later enacted statute,  
3 that is enacted before January 1, 2007, deletes or extends that date.

4 SEC. 3. It is the intent of the Legislature to instruct the Labor  
5 Commissioner, prior to January 1, 2007, to study and report to the  
6 Legislature on the status of labor law violations and enforcement  
7 in the car washing and polishing industry.

8 ~~SEC. 4. No reimbursement is required by this act pursuant to~~  
9 ~~Section 6 of Article XIII B of the California Constitution because~~  
10 ~~the only costs that may be incurred by a local agency or school~~  
11 ~~district will be incurred because this act creates a new crime or~~  
12 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
13 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
14 ~~the Government Code, or changes the definition of a crime within~~  
15 ~~the meaning of Section 6 of Article XIII B of the California~~  
16 ~~Constitution.~~

